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Breaking Down Clery Act Challenges

Campus Safety Conference – San Antonio
July 23, 2021

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Presenter

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Agenda

- Setting the Stage
- Campus Alerts
- Clery Geography
- Crime Statistics
- Annual Security Report
- Enforcement
- Adjourn



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Setting the Stage

An overview of Clery requirements and the current legal landscape

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Jeanne Clery. (Photo: Clery Center)

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The Law

- Campus Crime and Security Act of 1990
- Amendments: 1992, 1998, 2000, 2008, 2013
- 2008: Name of law changed to Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)
- 2013: Violence Against Women Reauthorization Act of 2013 (VAWA) signed into law
 - Contains significant amendments to the Clery Act
 - Amendments sometimes referred to as “Campus SaVE Act”

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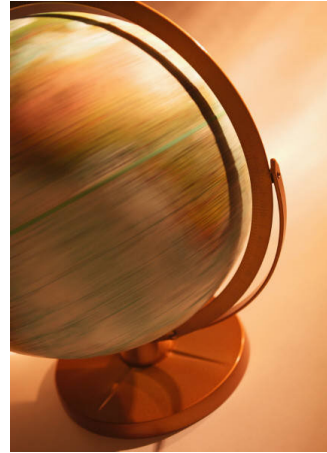
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What Institutions Must Comply?

- All institutions participating in Title IV programs
 - Includes foreign campuses of these institutions
- Not required to comply:
 - Distance education-only institutions
 - Foreign institutions



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Overarching Requirements

- Collect and classify reports of certain crimes
- Publish/Distribute Annual Security Report by Oct. 1 each year
- Provide crime statistics to ED via online survey
- Issue timely warnings and emergency notifications
- Comply with VAWA requirements
 - ASR statements
 - Educational programming
 - Disciplinary procedures
 - Rights & Options document

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Contingent Requirements

- Does the institution have a campus police or security department?
- If yes, must have Daily Crime Log
- Does the institution have on-campus student housing?
- If yes, must:
 - Include missing student policy and procedures in ASR
 - Comply with certain requirements related to fire safety

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Why Does Compliance Matter?

- More secure campus environment
- Protect institutional reputation
- Possible fines of almost \$60,000 per violation
- Possible continued oversight by ED if there are findings of noncompliance

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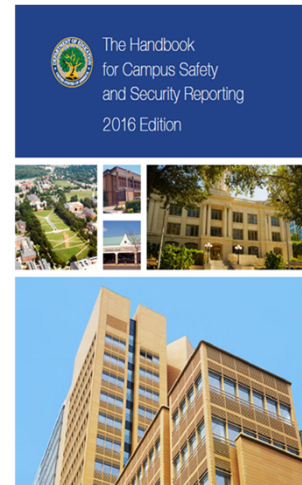
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Clery Handbook

- “Nonbinding guidance”
- Published in 2016
- 265 pages
- 14 Sections, not including Appendices
- Filled with examples
- RESCINDED (but still a “safe harbor”)



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FSA Clery Appendix

- “Nonbinding guidance”
- Electronic Announcement and Appendix
 - Announcement is 5 pages
 - Appendix is 13 pages
- Both published October 9, 2020
- “Rescission and Replacement” of 2016 Clery Handbook



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Why did this happen?

“The Department made the determination that the [Clery Handbook] did not achieve the Department’s goal of ensuring that adequate information is available to the public to foster improved campus safety and security. . . . The Department concluded that much of the guidance provided was outside of the scope of the relevant statutory . . . and regulatory . . . authority.”

Announcement at p. 2

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Campus Alerts

Exploring Timely Warnings & Emergency Notifications

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Timely Warnings

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Scenario



It's late on a Friday night. A student calls Campus Security and indicates that about 20 minutes ago she was sexually assaulted by an unknown male at a party at a fraternity house. This fraternity is officially recognized by the institution. The fraternity owns the house where the alleged incident occurred, and the house is right on the edge of campus.

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Timely Warnings

An institution must, in a manner that is timely and that withholds as confidential the names and other identifying information of victims . . . and that will aid in the prevention of similar crimes, report to the campus community on [certain] crimes.

34 C.F.R. § 668.46(e)

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Timely Warning Should Be Issued When These Four Conditions Have Been Met*

1. Clery crime
2. On Clery Geography
3. Reported to a CSA or local police agency
4. Considered by institution to represent a serious or continuing threat to students and employees

**Institution has discretion to issue timely warnings in other situations as well*

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Clery Crime Category	Types of Crimes
Primary Criminal Offenses	Murder/Non-Negligent Manslaughter; Manslaughter by Negligence; Rape; Fondling; Incest; Statutory Rape; Robbery; Aggravated Assault; Burglary; Motor Vehicle Theft; and Arson
Hate Crimes	<p>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.</p> <p>For Clery Act purposes:</p> <ul style="list-style-type: none"> Hate crimes include the primary criminal offenses listed above (except Manslaughter by Negligence) plus: Larceny-Theft; Simple Assault; Intimidation; and Destruction/Damage/Vandalism to Property. The eight categories of bias that may result in a hate crime being reported are as follows: race, gender, gender identity, religion, sexual orientation, ethnicity, national origin, or disability.
Arrests and Disciplinary Referrals	Arrests and referrals for disciplinary action for the following law violations: Drug Abuse Violations; Liquor Law Violations; and Weapons: Carrying, Possessing, Etc.
VAWA Offenses	Dating Violence; Domestic Violence; and Stalking

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Types of Clery Geography

- On-Campus Property
 - Subset: on-campus student housing facilities
- Public Property (within the campus or immediately adjacent and accessible from campus)
- Noncampus Buildings or Property



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Campus Security Authorities (CSAs)

1. Campus police or campus security department personnel
2. Individuals or organizations identified in institutional security policies
3. Individuals with security-related responsibilities
4. 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
 1. "Official" = any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution

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Threat Analysis

- How much time has passed between the incident and the report?
- Has the perpetrator been apprehended?
- Were there multiple perpetrators working together?
- Was the incident violent in nature?
- Were date rape drugs or other substances used to facilitate the crime?
- Was a weapon used during the commission of the crime?
- Does the incident appear to be an isolated incident with a specifically targeted victim(s)?
- Is there a pattern of similar incidents? (e.g., the same or similar crimes occurring in a short period of time; a particular group being targeted on multiple occasions; etc.)
- Are there other aggravating circumstances or predatory behaviors at issues suggesting that a threat/ongoing danger exists?

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Emergency Notifications

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Emergency Notifications

An institution's ASR must include:

The procedures the institution will use to 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.

34 C.F.R. § 668.46(g)(1)

If there is an immediate threat to the health or safety of students or employees occurring on campus, as described in paragraph (g)(1) of this section, an institution must follow its emergency notification procedures.

...the institution must provide adequate follow-up information to the community as needed.

34 C.F.R. § 668.46(e)(3)

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Examples

- Approaching forest fire
- Fire currently raging in a campus building
- Outbreak of meningitis, norovirus or other serious illness
- Approaching tornado, hurricane or other extreme weather conditions
- Earthquake
- Gas leak
- Terrorist incident
- Armed intruder
- Bomb threat
- Civil unrest or rioting
- Explosion
- Nearby chemical or hazardous waste spill

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From the Regulations...

“An institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances.”



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Differences Between Emergency Notifications and Timely Warnings

	Emergency Notification	Timely Warning
Scope	Significant emergency or dangerous situation	Clery crimes, reported to CSA's
Triggered by?	Event that is currently occurring on or imminently threatening campus	Crimes that occurred and represent 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

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Practical Suggestions Informed by Clery Act Enforcement

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Common Enforcement Principles

- Follow your policy
- Act reasonably based on what you know
- Make decisions on a case-by-case basis



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Practical Suggestions

- Educate students and employees about campus alerts
- Train CSAs and clarify communication channels
- Designate appropriate decision-makers

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Practical Suggestions (cont.)

- Facilitate prompt and accurate decision-making
- Empower your decision-makers
- Facilitate swift and effective execution

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Methods of Communication

From the Clery Appendix:

- *“An institution must develop procedures to 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.”*



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Methods (cont.)

- **From the Clery Handbook (safe harbor guidance):**
 - Institutions must ensure that notifications and warnings can be transmitted quickly to all students and employees
 - Cannot rely solely on a text messaging system if all members of the campus community are not required to participate in that system
 - Relying [solely] on email would not be adequate for institutions that do not establish an email account for all student and employees (or require them to register an email address)

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Practical Suggestions (cont.)

- Prepare multiple means of communication and select deliberately among them
- Provide sufficient information



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Timely Warning Example

WARNING: Armed Robbery outside of Smith Hall reported at 9:32 p.m. Perpetrator described as a tall male in a red hooded sweatshirt. Last seen running to the north across Ash Street. This is an active situation. Please be alert if you are in the area.

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Practical Suggestions (cont.)

- Document your process
- Review the big picture



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Scenario



Two students are shot and killed in a dormitory at 7:15 a.m. Campus security officers are notified and arrive on the scene at 7:24 a.m. Two high-ranking officials at the institution are made aware of the situation around 7:30 a.m., and the institution's office of the Executive Vice President is officially notified of the situation by campus security at 7:57 a.m. The President is informed by 8:10 a.m., and the crisis management team convenes at 8:25 a.m. to assess the situation. Information from the security department indicates that: (1) the shooter is unknown and has not been apprehended, (2) no weapon has been found, (3) no witnesses saw the incident, and (4) officers have the impression that it was a targeted domestic situation and that the suspect has left campus.

At 9:26 a.m., a timely warning is issued to all students and employees via email indicating, "A shooting incident has occurred on campus. We urge you to be cautious and to contact police if you observe anything suspicious."

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Scenario



A retired football coach still has a significant presence on an institution's campus and involvement with its football program and camps. During one of the camps, a graduate assistant observes the former coach forcibly fondling a child in the locker room, and immediately reports the situation to the football coach. The football coach reports the situation to senior officials, and they notify the institution's security department.

The retired football coach was never disciplined for this incident and continued to have a presence on campus. Several years later, the institution learned that the retired football coach had been removed from a volunteer position at a local high school due to inappropriate sexual conduct with a student. Soon after, local media reports began publishing stories about the retired football coach, including allegations of sexual misconduct with minors on the institution's campus and elsewhere. The institution also became aware that the retired football coach was going to be indicted for some of these incidents.

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Scenario



It is fall break at the institution and the campus is essentially closed from Thursday-Sunday. An on-campus sexual assault is reported to the Security Office on Saturday afternoon. The institution's timely warning procedures indicate that alerts will be issued within 24 hours and will be distributed by the Public Relations Department. Due to the campus essentially being closed, the Security Office is unable to contact the Public Relations Department until first thing Monday morning. On Monday morning, not long after classes have resumed, a timely warning is distributed by the Public Relations Department to the campus community.

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Clery Geography

Examining key concepts and difficult classifications

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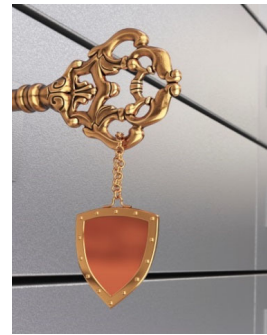
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Key Clery Mandate

An institution subject to the Clery Act must:

- Disclose statistics
- For Clery crimes
- Reported to have occurred on the institution's Clery geography
- That have been reported to a Campus Security Authority (CSA) or to local police



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Types of Clery Geography

- On-Campus Property
 - Subset: on-campus student housing facilities
- Public Property (within the campus or immediately adjacent and accessible from campus)
- Noncampus Buildings or Property



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Two Key Concepts

“Control” & “Reasonably Contiguous”

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On-Campus Property	Noncampus Property
Your institution owns or controls the site	Your institution owns or controls the site
Building and property are within the same reasonably contiguous geographic area	Not reasonably contiguous to main campus
Property is used in direct support of, or in a manner related to, the institution’s educational purposes	Property is used in direct support of, or in a manner related to, the institution’s educational purposes
	Frequently used by students

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Scenario



An institution is in a large city. A majority of its campus buildings are within two adjacent city blocks. However, its business school is in a building about 10 blocks away. The institution has a long-term lease agreement to use this entire building.

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Control

With regard to “control,” the Clery Appendix simply provides a parenthetical:

“(e.g., leased by the institution)”

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Reasonably Contiguous

- ED does not apply any specific or measurable distance definition to **“reasonably contiguous geographic area.”**
- The Clery Handbook provided that **it is reasonable to consider locations within one mile of your campus border to be reasonably contiguous with your campus**
 - But, determination must be made on a case-by-case basis by taking into consideration the circumstances of the campus and the location
 - Example: 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

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On-Campus Student Housing

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Crimes reported to have occurred in on-campus student housing **must be dual-reported**

Crime Statistics

The statistical summary of crimes for this University over the past three calendar years is found in the chart below.

Offense	Year	On-Campus Property	On-Campus Student Housing Facilities	Public Property	Non-Campus Building or Property
Murder/Non-Negligent Manslaughter	2017	0	0	0	0
	2018	0	0	0	0
	2019	0	0	0	0
Manslaughter by Negligence	2017	0	0	0	0
	2018	0	0	0	0
	2019	0	0	0	0
Robbery	2017	0	0	0	0
	2018	0	0	0	0
	2019	0	0	1	0
Aggravated Assault	2017	3	2	0	0
	2018	0	0	0	0
	2019	0	0	0	0

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Public Property

- For the purposes of collecting statistics for Clery crimes for inclusion in the ASR, Clery geography includes “public property within or immediately adjacent to and accessible from the campus.”
- “Public property” is defined in the statute as “all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution’s educational purposes.”
- “Public property” is defined in the regulations as “all public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.”

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Noncampus locations

- In contrast to the Clery Handbook, the Clery Appendix provides very little guidance regarding what constitutes a noncampus location
 - Study abroad?
 - Athletic trips?
 - Safe harbor . . .

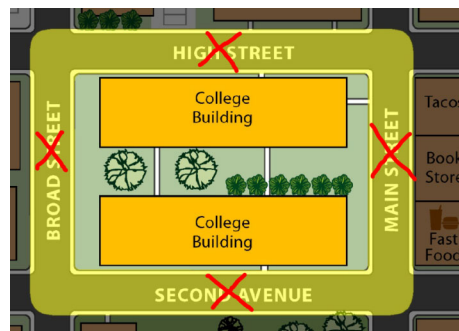
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From the Clery Handbook...

Noncampus locations do not have a public property reporting requirement



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Noncampus Property	Separate Campus
Institution owns or controls the site	Institution owns or controls the site
Not reasonably contiguous to main campus	Not reasonably contiguous to main campus
Frequently used by students	<p>Organized program of study</p> <p>Clery Handbook: this means the location offers courses in educational programs leading to a degree, certificate or other recognized credential</p>
Supports the institution's educational purposes	<p>One administrator on site</p> <p>Clery Handbook:</p> <ul style="list-style-type: none"> Does not have to be a high-level administrator Does not have to be a full-time administrator

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Why Does It Matter?

A separate campus is required to independently comply with **all** Clery Act requirements



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Scenario



An institution has a location on a U.S. military base. There is a written agreement given the institution “control” of a suite within a single building on the base. The institution has determined that this location is a separate campus due to there also being an organized program of study and an administrator on site. Areas of the building used to access the suite are also considered to be part of the campus.

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Military Base as a Separate Campus

- Public property definition:
 - All public property ... immediately adjacent to and accessible from campus
- Clery Handbook:
 - Public property refers to property owned by a public entity, such as a city or state government
- HOWEVER:
 - ED has told us that it considers a military base to be the government’s *private* property



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Crime Statistics

Discussing Clery crimes and related issues, including analysis of complex scenarios

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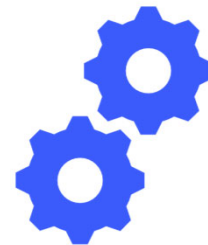
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Key Clery Mandate

An institution subject to the Clery Act must:

- Disclose statistics
- For Clery crimes
- Reported to have occurred on the institution's Clery geography
- That have been reported to a Campus Security Authority (CSA) or to local police



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How an Institution Discloses Crime Statistics

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Crime Statistics

Crime Statistics

The statistical summary of crimes for this University over the past three calendar years is found in the chart below.

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	2018	0	0	0	0
	2019	0	0	0	0
Manslaughter by Negligence	2017	0	0	0	0
	2018	0	0	0	0
	2019	0	0	0	0
Robbery	2017	0	0	0	0
	2018	0	0	0	0
	2019	0	0	1	0
Aggravated Assault	2017	3	2	0	0
	2018	0	0	0	0
	2019	0	0	0	0



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A Few Words on Campus Security Authorities

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The Role of CSAs

CSAs should...

- Document information received about criminal activity
- Immediately report to designated individual or office
- Offer resources (in appropriate circumstances)

CSAs should not...

- Investigate and try to determine authoritatively whether a crime took place
- Try to apprehend the alleged perpetrator
- Try and convince a victim to contact law enforcement if the victim chooses not to do so

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What Should Institutions Do?

- Designate an individual or office to coordinate and oversee CSAs
 - Have a process to re-evaluate CSA designations on at least an annual basis
 - Identify CSAs for separate campuses and non-campus locations
- Make sure CSAs know they have been designated as such
- Provide training to CSAs
- Identify a procedure to report crimes (and consider end of year certification process)
- Keep all documentation of reported crimes from CSAs

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Clery Crime Scenarios

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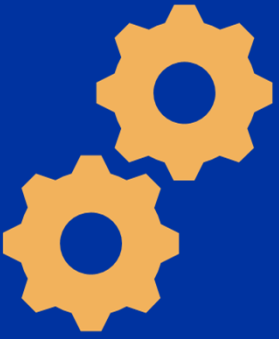
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Category	Descriptions
Primary Criminal Offenses	Murder/Non-Negligent Manslaughter; Manslaughter by Negligence; Rape; Fondling; Incest; Statutory Rape; Robbery; Aggravated Assault; Burglary; Motor Vehicle Theft; and Arson
Hate Crimes	<p>A hate crime is a criminal offense that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim.</p> <p>For Clery Act purposes:</p> <ul style="list-style-type: none"> Hate crimes include the primary criminal offenses listed above (except Manslaughter by Negligence) plus: Larceny-Theft; Simple Assault; Intimidation; and Destruction/Damage/Vandalism to Property. The eight categories of bias that may result in a hate crime being reported are as follows: race, gender, gender identity, religion, sexual orientation, ethnicity, national origin, or disability.
Arrests and Disciplinary Referrals	The number of arrests and the number of persons referred for disciplinary action for the following law violations: Drug Abuse Violations; Liquor Law Violations; and Weapons: Carrying, Possessing, Etc.
VAWA Offenses	Dating Violence; Domestic Violence; and Stalking


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Scenario



On July 23, 2019, an anonymous caller reports to Campus Police that he knew that a current employee was raped by another employee while walking on campus to her car one evening in 2018.

Should this report result in a crime statistic being disclosed?



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From the Clery Appendix...

- A school must disclose Clery crimes reported to a CSA
- It doesn't matter whether or not the individuals involved in the crime, or reporting the crime, are associated with the institution

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Also...

- Statistics based on reports of *alleged* criminal incidents.
 - Not necessary:
 - Investigation
 - Finding of guilt or responsibility
- Disclosures must be made based on “year reported” and not “year occurred”

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Scenario



A student reports to Campus Security that her laptop was stolen from her roommate's car. The perpetrator left a piece of paper in the car that contained the student's name and a swastika. The reporting student is Jewish.

How should this incident be disclosed?

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Robbery vs. Burglary vs. Larceny-Theft

Robbery

- Taking something of value by using force or threat of force and/or by putting the victim in fear

Burglary

- Requires *unlawful* entry of a structure
 - Forcible entry or non-forcible trespass

Larceny-Theft

- The unlawful taking, carrying, leading or riding away of property from the possession (or constructive possession) of another
- Only needs to be disclosed for Clery purposes if there is a hate crime bias involved



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Scenario



While working the night shift, you get a call from the Facilities Director indicating that a University-owned truck was stolen from inside the garage where all of the institution's vehicles are stored when they are not in use. It appears that someone cut the lock on the fence surrounding the garage and used something to wedge open the garage door.

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From the Clery Handbook...

Do not classify as Motor Vehicle Theft:

- A forcible or unlawful entry of a building to steal a motor vehicle. Include this offense as a Burglary.

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Another Notable Rule for Hate Crime Reporting

- When a primary criminal offense is a hate crime, it should be disclosed as both a hate crime and as a regular crime statistic



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Scenario



At a school in Texas, an RA smells marijuana coming from a student's dorm room. The student, who is 21, admits to smoking marijuana to address back pain, as prescribed by her doctor, in violation of University policy.

Should this incident be reported?

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Regulations say . . .

Report disciplinary referrals for drug law **violations**, liquor law **violations**, and **illegal** weapons possession.

From Clery Handbook:

- You must report statistics for violations of the law that occur on your *Clery Act* geography and result in arrests or persons being referred for disciplinary action
- Do **not** include violations of your institution's policies that resulted in persons being referred for disciplinary action if there was no violation of the law

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Using Discretion

From Clery Handbook:

- 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
- [The Department recommends] that you document justification for this determination
- Officer discretion is allowed only for Weapons, Drug Abuse and Liquor Law Violation referrals **resulting from a single incident**

FSA Appendix is silent in this regard

- We recommend reporting following the Clery Handbook guidance **or** reporting all of the violations

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Scenario



A student reports that her ex boyfriend, who is the father of her daughter, came to her on-campus apartment and repeatedly punched and kicked her.

How should this incident be reported?

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Domestic Violence vs. Dating Violence

Domestic Violence

A felony or misdemeanor crime of violence committed—

- By a current or former spouse or intimate partner of the victim
- By a person with whom the victim shares a child in common
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner
- 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
- 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

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
- The existence of such a relationship shall be determined 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

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From the Clery Regulations...



- Dating violence does not include acts covered under the definition of domestic violence

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What if they didn't have a child together?

- Definition of domestic violence includes violence committed:
 - *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***
- Consult state laws

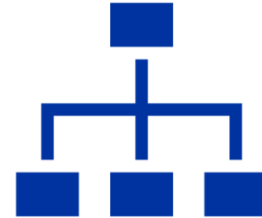
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Hierarchy Rule

- A requirement in the FBI's UCR program that, for purposes of reporting crimes in that system, when more than one offense is committed during a single incident, only the most serious offense should be disclosed
- This rule includes:
 - Murder/Non-Negligent Manslaughter
 - Manslaughter by Negligence
 - Sexual Assault offenses (Rape, Fondling, Incest, Statutory Rape)
 - Robbery
 - Aggravated Assault
 - Burglary
 - Motor Vehicle Theft

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Exclusions from Hierarchy Rule



- Arson
- Hate Crimes
- Arrests/Disciplinary Referrals for Violations of Law
- VAWA Offenses

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Elimination of Hierarchy Rule

- FBI stopped using this system as of January 1, 2021
- Unclear what effect this has on Clery reporting
- For now, continue to use the Hierarchy Rule as set forth in the Clery regulations

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Crime Log

- Reports of crimes that occurred within the patrol jurisdiction of the campus police or security department must also be entered into the crime log
- A patrol jurisdiction (also referred to as a “patrol zone”) is any property that does not meet any of the *Clery Act* geographic area definitions, but which is regularly provided with police or security patrol services by the campus agency

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More about the Crime Log...

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



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Scenario



A student reports that she was raped on campus. An internal investigation takes place, and a hearing panel determines that there was no violation of College policy.

How should this incident be reported in the ASR?

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Unfounded Crimes

- Must be disclosed in annual statistics
- From Clery Handbook:
 - A crime is considered unfounded for *Clery Act* purposes **only if sworn or commissioned law enforcement personnel make a formal determination that the report is false or baseless**
 - If a crime is unfounded, it should not be included in the *Clery Act* statistics for the associated crime category, and should be removed from any previously reported statistics for that crime category
 - The unfounded crime should be included in the total count of unfounded crimes for the year in which the crime was originally reported

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Annual Security Report

Evaluating various issues related to the ASR

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Key Clery Concept

- Annual Security Report must be published each year and include:
 - Crime statistics for past 3 calendar years
 - Current statements of policy, procedure, and programming

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A Few Words on Crime Statistics in the ASR

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Common Issues

- Failure to disclose statistics for:
 - The past 3 calendar years
 - Separate campuses
- Using incorrect crime designations
 - Example: Sex offense-forcible & Sex Offense-non-forcible instead of Rape, Fondling, Incest, and Statutory Rape
- Not separating arrests and disciplinary referrals for violations of law
- Including inapplicable Clery geography
- Not including stats from local law enforcement

Offense	Year	On Campus Property	On Campus Student Housing Facilities	Public Property	Non-Campus Building or Property
Murder/non-Negligent Manslaughter	2017	0	0	0	0
	2018	0	0	0	0
	2019	0	0	0	0
Manslaughter by Negligence	2017	0	0	0	0
	2018	0	0	0	0
	2019	0	0	0	0
Robbery	2017	0	0	0	0
	2018	0	0	0	0
	2019	0	0	1	0
Aggravated Assault	2017	3	2	0	0
	2018	0	0	0	0
	2019	0	0	0	0

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Hate Crimes & Unfounded Crimes

Hate crimes:

2019: 1 noncampus incident of aggravated assault characterized by national origin bias.

2018: No hate crimes reported.

2017: 1 public property incident of intimidation characterized by sexual orientation bias; 1 on-campus incident of destruction/damage/vandalism of property characterized by religion bias.

Unfounded crimes:

2019: 3 unfounded crimes.

2018: 0 unfounded crimes.

2017: 0 unfounded crimes.

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Making the ASR Available to *Prospective* Students & Employees

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Providing the ASR

- If you choose to provide your annual security report to prospective students and prospective employees by posting the report on an Internet site, the notice provided to each individual must include:
 - the exact URL for where the report is posted
 - a brief description of the report
 - a statement that the institution will provide a paper copy of the report upon request
- Note that you may **not** use an intranet site to make disclosures to prospective students and employees

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Possible Options for the Notice

Prospective Students

- Statement at end of online/hard copy admission application
- Include statement with admissions materials
- Include statement with marketing materials
- Publish statement somewhere on Admissions webpage

Prospective Employees

- Statement at end of online/hard copy employment application
- Include statement at end of job postings
- Publish statement somewhere on HR/Job Openings website
- Provide to individuals that are interviewed

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Revising the ASR

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Guidance

- Must update the ASR if there are corrections to statistics or changes to statements of policy, procedure and programming
- From the Clery Handbook:
 - “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.”

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Recordkeeping

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Summary

- Must keep Clery-related records for 3 years *from the latest publication of the ASR to which they apply*
- Effectively, 7 years
- Example
 - In January 2015 a Clery crime is reported to campus police
 - Statistic included in ASRs published in October 2016, 2017, and 2018
 - Retain for three more years = 2019, 2020, 2021

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Use of Sexual Misconduct or Title IX Policy to Meet VAWA Requirements

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VAWA Requirement

Include in the ASR a description of educational programming (PPAP & OPAC) for students and employees, which must include:

- A statement that the institution prohibits the VAWA offenses
- Definitions of dating violence, domestic violence, sexual assault, and stalking in applicable jurisdiction
- Definition of consent (as it relates to sexual activity) in applicable jurisdiction
- Description of safe and positive options for bystander intervention
- Information on risk reduction

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Another VAWA Requirement

The ASR must include procedures victims should follow if a VAWA crime has occurred, including:

- Where applicable, the rights of victims and the institution's responsibilities for orders of protection, "no contact" orders, restraining orders, or similar lawful orders issued by a criminal, civil or tribal court, or by the institution

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A Few Other Troublesome VAWA Policy Statements

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VAWA Policy Statements

- Options about the involvement of law enforcement and campus authorities, including notification of the victim's option to notify proper law enforcement authorities, including
 - on-campus and local police
 - be assisted by campus authorities in notifying law enforcement authorities if the victim chooses
 - decline to notify such authorities***
- 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 in the community
- Describe ***each type of disciplinary proceeding*** used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; how to file a disciplinary complaint; and 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
- List ***all the 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

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Some Other Troublesome Policy Statements (General)

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General Policy Statements

- Working relationship with state and local law enforcement agencies, including whether the institution has written agreements with such agencies, such as written MOUs, for investigation of alleged criminal offenses
- A description of procedures, if any, that encourage pastoral counselors 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 (if none, state this instead)
- Security considerations used in the maintenance of campus facilities

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General Policy Statements

- A statement that describes 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
- A description of programs designed to inform students and employees about the prevention of crimes
- A policy statement concerning the monitoring and recording, through local police agencies, of criminal activity in which students engaged at noncampus locations of student organizations officially recognized by the institution, including student organizations with noncampus housing facilities (if the institution has no officially recognized student organizations with noncampus locations, state this in the ASR)
- A statement that 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 such 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

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Multiple Campuses

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Best practice...

“If your institution has **multiple campuses**, remember that *Clery Act* requirements must be met individually for each separate campus. ... You may publish a single document covering all campuses as long as you clearly identify the policy statements and crime statistics that are associated with each campus.”

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Pressure Points (Failure to Differentiate Between Campuses)

- Discussing only main campus's security department & security arrangements
- Reporting mechanisms
- Access to campus buildings
- Educational programs
 - General security / crime prevention
 - VAWA
- Timely warnings and/or emergency response procedures
- If campuses are in different states:
 - Jurisdictional VAWA definitions
 - Sex offender registry info
- State/local info about protection orders & other resources

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Drugs and Alcohol

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Must Include in ASR...

- A statement regarding the possession, use and sale of alcoholic beverages
- A statement regarding the institution's enforcement of state underage drinking laws
- A statement regarding the possession, use and sale of illegal drugs
- A statement regarding the institution's enforcement of federal and state drug laws
- A description of any drug or alcohol abuse education programs, as required under Section 120(a) through (d) of the Higher Education Act (HEA), otherwise known as the Drug-Free Schools and Communities Act of 1989 (DFSCA)
 - Only ASR statement that can be complied with by cross-referencing / linking to other materials rather than including directly in ASR

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DFSCA Requirements

1. Annual notification(s) to students and employees
2. Biennial review of drug and alcohol abuse prevention program (DAAPP)

While DFSCA materials can be cross-referenced in ASR, they will be checked during a program review along with Clery compliance

26 out of 28 institutions fined for Clery noncompliance in 2017-2018 had DFSCA findings

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Substance of Annual Notice

- Written standards of conduct
 - Prohibiting unlawful possession, use or distribution
 - By students and employees
 - On institutional property or as part of institutional activities
- Statement of institutional sanctions for students and employees



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Substance of Annual Notice (cont.)

- Description of
 - Legal sanctions (local, State, Federal)
 - Health risks associated with abuse
 - Any drug or alcohol counseling/treatment/rehab program available to students/employees



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Biennial Review

- Review DAAPP every 2 years
- Goals:
 - Determine effectiveness
 - Implement needed changes
 - Ensure consistent enforcement of disciplinary sanctions



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Enforcement

A look at the U.S. Department of Education's enforcement mechanisms & current trends

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Why is Clery Compliance so Difficult?

Many Layers of Compliance



Example: Crimes

- Categories of Clery Crimes
- Clery Geography
- Campus Security Authorities (CSAs)
- Hierarchy Rule
- Unfounded Crimes
- Dual-Reporting Housing Crimes
- Daily Crime Log
- Statistics from Law Enforcement

Limited Guidance



Clery Appendix provides ED's expectations

- Significantly reduced guidance
- Can be difficult to navigate and interpret

Institutional Realities



Examples:

- Working in silos
- Lack of training
- Clery Coordinator wearing many hats
- Turnover in staff
- The "September rush"
- Other institutional priorities

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Enforcement Overview



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Types of Reviews

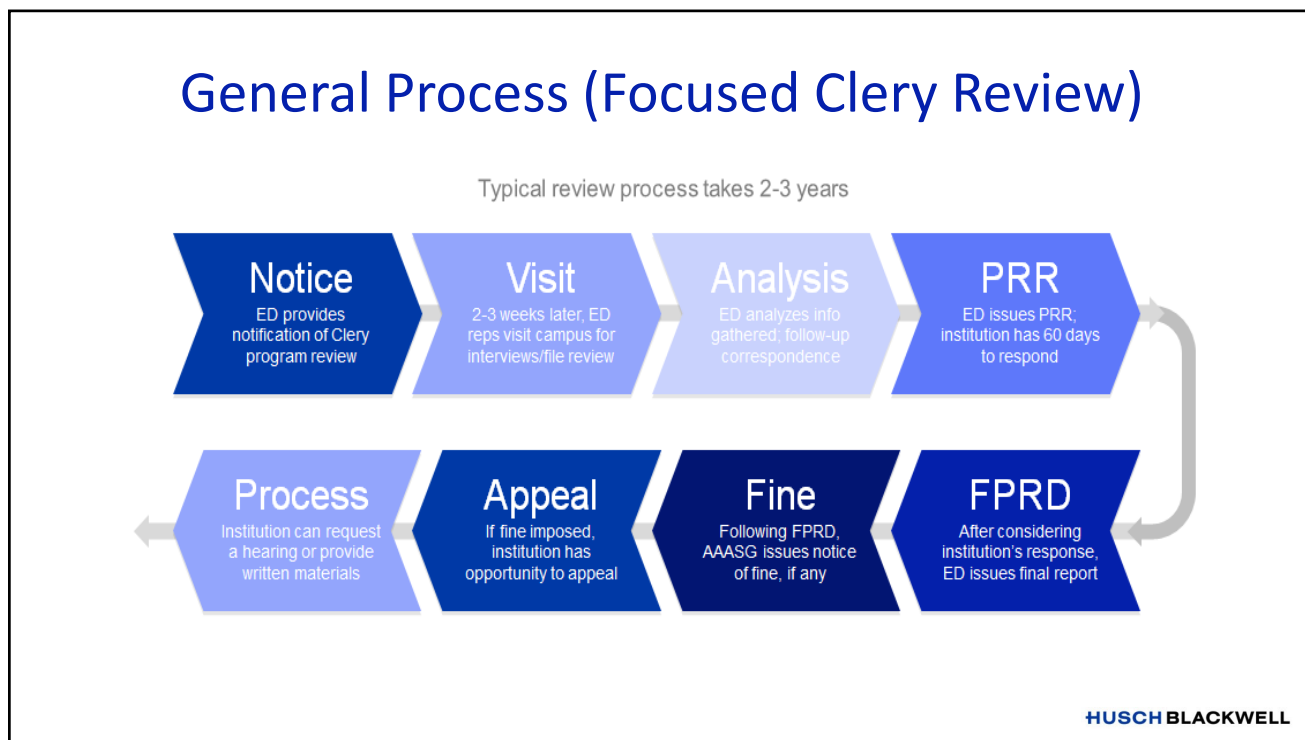
- Program reviews
 - General Title IV program review
 - Focused Clery Act program review
- “Spot Check” reviews



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Final Thought

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How Can My Institution Protect Itself?

Relatively minor thing: ensure DFSCA compliance

- Annual notification(s)
- Biennial review

More significant thing: ensure crime statistics are not being underreported

- Identify & train CSAs
- Clarify reporting channels
- Properly classify Clery geography
- Review of incident reports from Clery perspective

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What happens next?

- Keep Clery Appendix?
- Undo rescission of Clery Handbook?
- Issue a new Clery Handbook?
- No one knows . . .

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Questions?

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Upcoming Clery Compliance Toolset Demo

**Wednesday, July 28 @ 12:00 PM
(Central)**

For more information, contact

Mary Jones

- Mary.Jones@huschblackwell.com
- 816-983-8314



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Other Clery Services Offered

- Various levels of Clery compliance audits, including performing mock program reviews
- Provide training for institutional personnel responsible for Clery compliance
- Prepare institution-specific internal procedures for ensuring Clery compliance obligations are consistently being considered and met
- Advise on other miscellaneous Clery-related issues, including, but not limited to:
 - Clery geography
 - Crime reporting mechanisms
 - Analysis of crime reports to determine Clery classification
 - Daily crime log compliance
 - Requesting crime statistics from local law enforcement agencies
 - Campus Security Authorities (designations, notifications, informational materials, etc.)
 - Drafting MOUs with local law enforcement
 - Preparing and distributing the Annual Security Report (including to prospective students and prospective employees)
 - Timely warning process
 - Developing emergency management plans
 - Educational programs and campaigns for the campus community (related to dating violence, domestic violence, sexual assault, and stalking)

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