

SOUTHWEST ADA CENTER

Technical Review of Law

The Clery Act

Introduction

The Clery Act, or the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, is a federal statute that, among other things, requires colleges and universities that receive federal funding to disseminate an Annual Security Report to employees and students every October 1. The Clery Annual Security Report must include statistics of campus crime for the preceding three calendar years as well as details about efforts taken to improve campus safety. Additionally, the Clery Act contains requirements for real-time availability of campus crime information via a daily crime log accessible to the public. Importantly, the law imparts the obligation to issue timely warnings and emergency notifications of dangerous circumstances present on campus. See, 20 U.S.C. § 1092(f) and 34 C.F.R. § 668.46.

History and Purpose of the Clery Act

The Clery Act was named after Jeanne Clery, a freshman at Lehigh University in Pennsylvania who was sexually assaulted and murdered in her residence hall room in 1986. The assault and murder of Jeanne Clery was one of 38 violent crimes recorded at the university in three years. However, universities at the time had no obligation to report such crime statistics. Jeanne Clery's parents argued that their daughter would not have attended Lehigh University if the violent crime rates had been published and launched a campaign of social advocacy to require that universities record and publicly post their annual violent crime statistics. The objective was eventually realized in 1990 when the Act was signed into federal law as an amendment to the Higher Education Act of 1965.

Collected Data that Must be Reported

The Clery Act requires post-secondary institutions to disclose information about certain crimes. The list of offenses that must be transparently reported eventually expanded through several reauthorizations and amendments since the inception of the law in 1990. Currently, colleges and universities must include four categories of offenses in their Annual Security Report crime data: criminal offenses; hate crimes; Violence Against Women Act offenses; and arrests and referrals for certain types of disciplinary action. Criminal offenses include, but are not limited to, murder and non-negligent manslaughter, negligent manslaughter, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft and arson.

Where Must Crimes Occur Before Reporting is Required

Clery Act crime reporting requirements cover an institution's campus and also apply to certain locations outside of the traditional campus. Institutions must include statistics for crimes that occur in the following areas: anywhere on campus; on-campus student housing (as a separate category); public property within campus bounds; public property immediately adjacent to the campus; non-campus buildings and property owned or controlled by an organization that are used for educational purposes and frequently used by students but not a part of the core campus; and non-campus buildings and property owned or controlled by a student organization officially recognized by the institution. This is referred to as "Clery geography."

Who must report crimes

Criminal offenses that are reported to a Campus Security Authority (CSA) or a local police department must be included in the Annual Security Report. A CSA is an individual or organization at a college or university who, because of their role at the institution, must notify the institution of any alleged Clery Act crime occurring on Clery geography that is reported to them, or that they personally witness. The federal regulations implementing the Clery Act define a CSA as: (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 or security department; (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; and/or (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. *Id.*

Moreover, the intersection between the Clery Act and Title IX on Clery's mandatory reporting requirement is complex; i.e., other campus security authorities may also be deemed as mandatory reporters under Title IX, whereas others may not. Hence, examples of non-police CSAs are team coaches, advisors, residence directors/assistants, Greek affairs coordinators, guest relations personnel, Title IX coordinators, student activity coordinators and deans or directors of student-related programs—including Disability Student Services (DSS).

When must an incident be reported

The required timing for crime reporting can be separated into two broad categories--depending on the severity of the crime reported. In some circumstances, colleges and universities may be required to issue a "timely warning" if there is a current threat to the campus community. Nonetheless, they must reflect the reported crime in the annual report statistics by October 1 of each year. Once an institution is notified that a "Clery Act" crime has occurred within Clery geography, the report must be reviewed by an institution official to determine if it reflects a "serious and ongoing" threat to the campus community. If a crime report reflects a "serious and ongoing" threat, the institution must issue a timely warning to the entire campus. The names and other identifying information of victims must be kept confidential. Even though the Clery Act does not specifically define "timely," this requirement is meant to enable people to protect themselves to the extent that the warning should be issued as soon as pertinent information is available.

The matter of timely warnings came to the forefront of the Clery Act conversation in 2007 after the Virginia Tech mass shooting, when the U.S. Department of Education found that Virginia Tech failed to issue a timely warning required under the Clery Act by emailing the student body two hours after the first two victims were shot in a dormitory. Thus, while colleges and universities have discretion in appointing an employee with the authority to issue a timely warning, this role is typically filled by a high-ranking member of the institution. Regardless of who is appointed with this responsibility, the institution should be sure to identify this person and

how the decision to issue a timely warning is made in its Annual Security Report and policy statement.

Perhaps more importantly, an emergency notification (as distinguished from a timely warning) is required when there is an immediate threat to the health and safety of the campus community. Unlike a timely warning, emergency notifications are used for a broader range of circumstances, and can include things such as threatening weather, gas leaks, fires and disease outbreak, among other threats. If there is an immediate threat to the health or safety of students or employees occurring on campus, an institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

Effectively executed timely warnings and emergency notifications have been credited with preventing disaster at a number of college campuses. For example, in 2016, Ohio State University issued an emergency notification of an active terrorist attack on campus, advised students to take shelter and notified them of where the incident had occurred. This notification was issued four minutes after the attack began and is credited with saving the lives of victims.

The Daily Crime Log Requirement

An institution that maintains a campus police or campus security department must maintain a written, easily understood daily crime log that lists, by the date the crime was reported, any crime that is reported to have occurred within its Clery geography or elsewhere within the patrol jurisdiction of the department. The log must include the nature, date, time and general location of each reported crime, and the disposition of the complaint. The institution must make any entry or an addition to an entry to the crime log within two business days after the report of the information to a CSA. The institution must make the crime log for the most recent 60-day period open to public inspection during normal business hours and must make the crime log for earlier periods available upon request within two business days. The crime log must be available on-site, meaning that if an institution has an additional campus with a campus police or security department, a separate log must be available at, or accessible from, that campus as well. Many institutions post the Clery crime log on their website while hard copy may also be utilized.

What must the Annual Security Report Include

The Annual Security Report (ASR) must include a list of titles of each person or organization to whom students and employees should report Clery Act crimes for the purposes of making timely warning reports and the annual statistical disclosure. The ASR must also include institutional policies and procedures for victims or witnesses to report Clery Act crimes on a voluntary and confidential basis for inclusion in the annual disclosure of crime statistics. Furthermore, institutions must include current policies concerning matters such as the security of, and access to, campus facilities and residences, as well as security considerations in the maintenance of campus facilities.

Examples of other information that must be incorporated in the ASR, include policies concerning alcoholic beverages and underage drinking; policies regarding illegal drug use under federal and state laws; programs on substance abuse; programs to prevent intimate partner violence; information regarding sex offenders; emergency response and evacuation procedures; campus crime statistics; and policies on campus security and access to campus facilities.

Penalties for Clery Act Non-Compliance

Institutions of higher education that are found to be out of compliance with the Clery Act are subject to fines by the U.S. Department of Education, and in theory risk losing their federal funding. By federal law the Department is required to adjust the Clery Act fine rate each year; effective as of 2021, the Department increased the fine rate to \$59,017 per violation. Given the Department's discretion in counting the number of "violations" in any given situation, Clery Act exposure can be substantial in cases of systemic noncompliance.

For instance, in 2016 the Department imposed \$2.4 million in fines on Penn State University for findings of Clery Act noncompliance related to the University's handling of the Jerry Sandusky offenses. The highest aggregate penalty to date was levied in 2019, when Michigan State University was issued a Clery Act fine in the amount of \$4.5 million for violations relating to the Larry Nassar sexual abuse cases, in addition to general Clery noncompliance.

Conclusion

Under the Clery Act, colleges and universities are required to track reported crimes on their campuses and publish statistics of those reports. These numbers represent a snapshot of a campus based on broad categories of crime. The statistics are dependent on student reporting crimes, campus security accurately documenting reports and meaningfully engaging with students, and institutions posting the data and addressing student safety rather than avoiding an unpleasant topic. Colleges and universities should be mindful that these numbers also represent what is most likely a traumatic event for some students and should employ high sensitivity when seeking to encourage reporting. Certainly, colleges and universities are not expected to end all crime and shield students from every possible crime or tragedy, but they do have the power to track and publish crime statistics and educate student populations on campus safety policy and procedure. The difficult and nuanced requirements of a Clery annual report stem from a student's right to know about crimes that have occurred in the institution's and be aware of institutional policies on safety. The law informs everyone on campus and enables everyone to ask questions and be part of a community effort to maintain a safe academic environment.

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