



National Association of College and University Attorneys

Presents:

**THE CLERY ACT AMENDMENTS IN THE VIOLENCE  
AGAINST WOMEN ACT: WHAT THEY MEAN FOR CLERY  
ACT AND TITLE IX COMPLIANCE**

**Virtual Seminar**

In Cooperation with the American Council on Education and the National Association  
of College and University Business Officers

**Friday, May 31, 2013**

12:00 PM – 2:00 PM Eastern

11:00 AM – 1:00 PM Central

10:00 AM – 12:00 PM Mountain

9:00 AM – 11:00 AM Pacific

**Presenters:**

**Andrea Stagg**

Associate Counsel

State University of New York Office of General Counsel

**Joseph Storch**

Associate Counsel

State University of New York Office of General Counsel

# NACUA VIRTUAL SEMINAR SERIES

FRIDAY, MAY 31, 2013

## THE CLERY ACT AMENDMENTS IN THE VIOLENCE AGAINST WOMEN ACT: WHAT THEY MEAN FOR CLERY ACT AND TITLE IX COMPLIANCE

### SPEAKER BIOGRAPHIES



**Andrea Stagg** is an Associate Counsel at the State University of New York Office of General Counsel. Andrea provides legal counsel in a wide variety of areas to the SUNY Colleges at New Paltz, Oneonta, and Plattsburgh, and also has System-wide responsibilities in Title IX compliance, athletics, and state authorization. Prior to joining SUNY, Andrea was an Attorney Fellow at the Office of Legal Affairs at University of Maryland University College. Andrea graduated Phi Beta Kappa with high honors from Rutgers University and then worked for Rutgers Office of Federal Relations in Washington, DC. She received her J.D. from The George Washington University, where she served as Vice President of the Alternative Dispute Resolution Board and was a law clerk at the Office of the Senior Vice President and General Counsel. Since the publication of the April 4, 2011 Dear Colleague Letter, Andrea has created and presented more than a dozen Title IX compliance training sessions to college and university professionals throughout the state.



**Joseph Storch** is an Associate Counsel at the State University of New York Office of General Counsel. In addition to comprehensive legal representation for SUNY Oswego, SUNY Cortland, Morrisville State College, and the SUNY Institute of Technology, he chairs the SUNY Student Affairs Practice Group and advises clients on compliance with the Clery Act and other campus safety obligations. Joseph graduated Summa Cum Laude from SUNY Oswego with degrees in Political Science and Rhetorical Communications and received a SUNY Chancellor's Award for Student Excellence. He worked as an Admissions Counselor and then attended Cornell Law School where he served as Chancellor of the Moot Court Board. After graduating, he clerked for the New York State Appellate Division, 3rd Department. He has trained hundreds of higher education professionals in Clery Act compliance, including a NACUA Virtual Seminar and the NACUA new lawyers session on Clery Act compliance, and is the author of three NACUANOTES on Clery Act obligations.

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## The Clery Act Amendments in the Violence Against Women Act: What They Mean for Clery Act and Title IX Compliance

*Sponsored by the National Association of College and University Attorneys in cooperation with the American Council on Education and the National Association of College and University Business Officers*

**Andrea Stagg & Joseph Storch**  
State University of New York  
Office of General Counsel

NACUA MAY 2013 VIRTUAL SEMINAR

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## Introduction

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## Initial Thoughts on Clery and Title IX

- There's the **law**, plus...
- The Clery Act is part of the Higher Education Act, as amended; Title IX is part of the Education Amendments of 1972
- Regulations
- Other sub-regulatory guidance (this is much of what we will be talking about):
  - Handbook (2011)
  - April 2011 Dear Colleague Letter and others
  - Annual Clery Letters to Institutions
  - Clarifications (published and unpublished)
  - Program Review Reports

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### Clery Act Background

- Crime and safety policy reporting, as well as other allied requirements such as timely warnings, emergency notifications, missing persons policies, etc.
- Initially passed in 1990 as the Crime Awareness and Campus Security Act, amended in 1992, 1998 (renamed for Jeanne Clery), 2000, 2008, and now in 2013 with reauthorization of the Violence Against Women Act.

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### Clery Act Background

- Solely enforced by the Department of Education (no private right of action)
- ED regulation was questioned in the past:  
*“The act is meant to be enforced, and the Department of Education is palpably, embarrassingly defective. It’s hard to find a strong enough adjective to describe it.”*  
- Senator Arlen Specter (R-PA), May 2006

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### Clery Act Background

- Enforced (solely) by the Department of Education (no private right of action)
- ED regulation was questioned in the past:  
*“Senator Santorum and I have been discussing this situation and we want to find out what the facts are. But based on what we see on the record, we would have to move from the Department of Education to the Department of Justice.”*  
- Senator Arlen Specter (R-PA), Congressional Hearing, May 2006

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### Clery Act Background

- Program reviews and fines have been increasing.

2005- DOJ study says 1/3 of colleges comply with Clery Act

2006- In hearing, Senators threaten to shift oversight from ED to DOJ

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### Clery Act Background

2005- DOJ study says 1/3 of colleges comply with Clery Act

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### Clery Act Background

2005- DOJ study says 1/3 of colleges comply with Clery Act

2006- In hearing, Senators threaten to shift oversight from ED to DOJ

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### Title IX Background

- Title IX of the Education Amendments of 1972 prohibits sex discrimination in educational programs and activities
- Actual text is only 37 words; there are also regulations
- Most guidance comes from other sources: April 4, 2011 Dear Colleague Letter, recent resolution agreements, and the 2001 Revised Sexual Harassment Guidance

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### Title IX Background

- Resolution Agreements stemming from compliance reviews or investigations related to peer sexual harassment and violence
  - Eastern Michigan University (November 2010)
  - Notre Dame College (September 2010)
  - **[April 4, 2011 Dear Colleague Letter]**
  - University of Notre Dame (June 2011)
  - Yale University (June 2012)
  - University of Montana (May 2013)

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### Merging Title IX into Clery

- Violence Against Women Act Legislative History
- 2012 – Congress failed to pass
- 2013 – Passed in February and signed by the President on March 7

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### Road Map for Today's Seminar

- Changes to the Annual Security Report including new crimes and reportable incidents;
- Changes to victim notification and sexual assault response policies;
- New training requirements; and
- How the April 4, 2011 DCL on Sexual Violence was codified and where differences remain.

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### **New Hate Crime Reporting Categories**

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### Annual Security Report Changes

- New Hate Crime Reporting Categories
  - National Origin
  - Gender Identity
  
- Hate crimes are counted separately from Part I crimes and Drug/Alcohol/Weapons arrests and referrals.
- All Part I crimes, plus Larceny-Theft, Simple Assault, Intimidation and Destruction/Damage/Vandalism of Property are counted as hate crimes *if motivated by bias*

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**Annual Security Report Changes**

- New Hate Crime Reporting Categories (Part II)

The categories of bias are changed by VAWA

- –Race (2008 HEOA)
- –Gender (2008 HEOA)
- –Religion (2008 HEOA)
- –Sexual Orientation (2008 HEOA)
- –Ethnicity (2008) & [National Origin \(2011 Handbook\)](#)
- –Disability (2008 HEOA)
- –[Gender Identity \(2013 VAWA\)](#)
- –[National Origin \(2013 VAWA\)](#)

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**New Reportable Incidents and New Definitions**

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**Annual Security Report Changes**

- New Reportable Incidents
  - Dating Violence
  - Domestic Violence
  - Stalking

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## Annual Security Report Changes

- New Reportable Incidents
  - Dating Violence
  - Domestic Violence
  - Stalking

– Statute says report using Federal definitions from elsewhere in VAWA, codified at 42 U.S.C. 13925(a)

– Note that (confusingly), VAWA also requires that we **notify** students of the definition of these crimes in the applicable jurisdiction (see slide 37), but **count** using Federal definitions.

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## Annual Security Report Changes

- New Reportable Incidents
  - Dating Violence

The term "dating violence" means violence committed by a person—

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (i) The length of the relationship
- (ii) The type of relationship
- (iii) The frequency of interaction between the persons involved in the relationship

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## Annual Security Report Changes

- New Reportable Incidents
  - Domestic Violence

The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse 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, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or 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.

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### Annual Security Report Changes

- New Reportable Incidents
  - Stalking

The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- (A) fear for his or her safety or the safety of others; or
- (B) suffer substantial emotional distress.

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### Annual Security Report Changes

- New definition for sexual assault: a return to the UCR?
- Legislation says “The term ‘sexual assault’ means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation”
- We think Congress meant the UCR: NIBRS
- UCR v. UCR: NIBRS

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### Annual Security Report Changes

- New Reportable Incidents
  - We believe that this will be a “Part III.” Such incidents are separately reportable and may not require a Part I crime to be reportable. If ED acts as in the past, it is likely that one incident may be reportable in multiple sections.
  - Example: Boyfriend culminates months of stalking by screaming racial epithets at girlfriend in residence hall, lights her room on fire, resulting in her death.

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## Annual Security Report Changes

- New Reportable Incidents
  - Example: Boyfriend culminates months of stalking by screaming racial epithets at girlfriend in residence hall, and then lights her room on fire, resulting in her death.

Current count (if campus reports hate crimes in tabular fashion):	Potential Future count (if ED treats similarly):
1 on campus homicide	All those counted on the left
1 on campus arson	1 domestic violence homicide
1 on campus residential homicide	1 domestic violence residential homicide
1 on campus residential arson	1 domestic violence arson
1 on campus hate crime (race) homicide	1 domestic violence residential arson
1 on campus hate crime (race) arson	1 stalking homicide
1 on campus hate crime (race) residential homicide	1 stalking residential homicide
1 on campus hate crime (race) residential arson	1 stalking arson
1 residence hall fire in Annual Fire Report	1 stalking residential arson

1 incident: count 9 times      1 incident: count 17 times

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## Effective Date

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## Effective Date

- Effective Date- statute says first Annual Security Report one calendar year after enactment (October 2014);
- ED has given notice that it will conduct rulemaking;
- ED guidance (5/29/13) indicates that colleges should make a good faith effort to comply by the effective date;
  - Institutions are expected to make their "best efforts to include statistics for the new crime categories for calendar year 2013"
- SUNY is collecting hate crimes, preparing notices for October 2014, and working on incident definitions.

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### Issues, Problems, and Questions Arising from Adding New Incidents and Determining Which Are Reportable

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### Issues and Problems

- Issues, problems, and questions arising from adding new incidents and determining which are reportable
- Distinction b/w domestic and dating violence
- How to properly define and recognize new incidents
- Where does stalking take place?
- What, if any, hierarchy will apply?

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### Educating Campus Security Authorities About Reporting New and Continuing Crimes and Incidents

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### Educating CSAs

- **Must have policies encouraging accurate and prompt reporting of *all* crimes to campus police and appropriate law enforcement when the victim of such crimes wants to or is unable to make such a report.**
- Colleges should train on new incidents and definitions or include new information in routine Clery CSA training.

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### Questions and Answers

*Push \*1 on your telephone key pad to comment or ask your question*

**OR**

*To submit a question in writing, click on the General Chat tab below.*

*Enter your question in the box below the chat area and press ENTER or click send.*

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### New Statements of Policies Required for the Clery Act Annual Security Report

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### Providing Written Notice

- Institutions must give new written information to **all students and employees**;
- Certain information must be provided in writing to **victims**; and
- Certain information must be provided in writing to both the **accused and the victim**.

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### New Policy Statements

- Policy Statement on Reporting Requirements
- Policies encouraging accurate and prompt reporting of *all* crimes to campus police and appropriate law enforcement when the victim of such crimes wants to or is unable to make such a report
- Statement of standard of evidence used in sexual assault, stalking, dating violence and domestic violence

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### New Policy Statements

- Required educational programs
- On-going prevention and awareness campaigns
- Procedures victims should follow
- Procedures for institutional disciplinary actions, including requirement of annual training by "officials" conducting investigations and hearings
- Equal opportunity regarding choice of advisors

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### Policy Statements in the ASR

Education programs shall include "primary prevention and awareness programs for all incoming students and new employees," which shall include:

- statement prohibiting domestic violence, dating violence, sexual assault, & stalking;
- definition of domestic violence, dating violence, sexual assault, & stalking in the applicable jurisdiction;
- definition of consent, in reference to sexual activity, in the applicable jurisdiction;
- safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene in cases of a risk of domestic violence, dating violence, sexual assault, or stalking;

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### Policy Statements in the ASR

Education programs shall include "primary prevention and awareness programs for all incoming students and new employees," which shall include:

- safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene in cases of a risk of domestic violence, dating violence, sexual assault, or stalking;
- information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and
- ongoing prevention and awareness campaigns for students and faculty on all of the above (subject to regulations and ED guidance).

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### Providing Written Notice

- Written policy provided to **all students and employees** must include everything in Victim Notification (forthcoming slides), and also information regarding:
  - Education programs to promote awareness about these crimes;
  - Confidentiality available for victims;
  - Existing health, victim advocacy, counseling, and other services;
  - Disciplinary procedures; and
  - Equitable opportunities for victim and accused.

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### Providing Written Notice

- Written policy provided to **all students and employees** must include everything in Victim Notification (forthcoming slides), and also information regarding:
  - Disciplinary procedures
    - Fair, prompt, impartial investigation and resolution;
    - Conducted by “officials” who receive “annual training.”

A note on “official:” We believe this does not *exclude* students from serving. Others disagree. ED may settle this in regulations.

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### Providing Written Notice

- Written policy provided to **all students and employees** must include everything in Victim Notification (forthcoming slides), and also information regarding:
  - Equitable opportunities for victim and accused
    - Accused and victim are entitled to the same opportunities to have others present during the institutional disciplinary process (hearing and other meetings).

We believe that this requires the **same access to opportunities**, but does not specifically require such opportunities. Others may disagree. ED will hopefully clarify in regulations.

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### Providing Written Notice

- Must notify **victim in writing** about:
  - Sanctions, protective measures;
  - Evidence preservation;
  - How to report the offense, on and off campus, and assistance with reporting;
  - Availability of orders of protection, no contact orders, etc.;
  - Interim remedies, including options for and assistance with changing academic, living, transportation, and working situations, if requested and reasonably available;
  - Procedures for institutional disciplinary proceedings.

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### Providing Written Notice

- Notify the parties simultaneously and in writing about:
  - The outcome of an institutional disciplinary proceeding;
  - Procedures for appealing the results, **if any**;
  - Any interim results (pre-appeal);
  - When the results become final.

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### Timely Warning

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### Timely Warning

- Withhold victims' names as confidential (practically we should have been doing this anyway)
- We may release the name of the accused.

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**The Clery Act Amendments,  
Title IX and the April 4, 2011 DCL:  
How They Fit Together**



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**DCL in VAWA**

- Complaint investigations and resolutions must be prompt, fair, and impartial;
- Equal access and opportunities for the accused and accuser, including to the appeal procedures, **if any**, and support of an advisor, **if permitted**;
- Simultaneously inform the parties in writing of the outcome and appeal process, **if any**;
- Institutional retaliation is prohibited (which has long been the case; this just tweaked the language).



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**DCL & VAWA - Differences**

- **VAWA** requires institutions to publish the standard of evidence that will be used in a disciplinary proceeding;
- **DCL** requires institutions to use “preponderance of the evidence” as the standard for sex discrimination cases.

• **Interestingly...the legislative history is revealing**



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### DCL & VAWA - Differences

- **VAWA** requires institutions to publish information about the availability of confidentiality for victims;
- **DCL** requires institutions to respect requests for confidentiality to the extent *possible* while following through with the obligation to investigate and respond.

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### DCL & VAWA - Differences

- **VAWA** prohibits institutional retaliation (which has long been the case; this just tweaked the language);
- **DCL** requires institutions to respond to retaliation by and among **college community members** including victims and accused individuals.

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### DCL & VAWA - Issues

- **VAWA** requires institutions to treat the parties in cases of domestic violence, dating violence, & stalking similarly to how the **DCL** requires treating the parties in sex discrimination cases.
  - Simultaneous written notice, notification about prosecution/disciplinary options on and off campus, notification about on and off campus services and resources.

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### DCL & VAWA - Issues

- VAWA potentially minimizes one of the major differences between Clery reportable incidents and reports that require institutional action under Title IX
- Historically:
  - Clery: Not Who, But **Where** and **When**
  - Title IX: Not When, Maybe **Where**, Definitely **Who**
- Still, distinguish between **counting** and **acting**

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## Special Issues

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### Special Issues

- Hierarchy/counting issues
- Interim remedies and reasonableness
- Geographic issues – cyberstalking?

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## Questions and Answers

*Push \*1 on your telephone key pad  
to comment or ask your question  
OR  
To submit a question in writing, click on  
the General Chat tab below.  
Enter your question in the box below the  
chat area and press ENTER or click send.*



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## Thank You!

The NACUA Clery Act Resource Page is located at:  
[http://www.nacua.org/lrs/NACUA\\_Resources\\_Page/CleryActResources.asp](http://www.nacua.org/lrs/NACUA_Resources_Page/CleryActResources.asp)

The Compliance Alliance Clery Act Resource Page is located at:  
<http://www.higheredcompliance.org/category/resources-by-topic/campus-safety-clery-act-crime-and-fire-reporting/>



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*One Hundred Thirteenth Congress*

*of the*

*United States of America*

*AT THE FIRST SESSION*

Begun and held at the City of Washington on Thursday,  
the third day of January, two thousand and thirteen

An Act

To reauthorize the Violence Against Women Act of 1994.

*Be it enacted by the Senate and House of Representatives of the United States of America  
in Congress assembled,*

\*\*\*\*\*

SEC. 304. CAMPUS SEXUAL VIOLENCE, DOMESTIC VIOLENCE, DATING VIOLENCE,  
AND STALKING EDUCATION AND PREVENTION.

(a) In General- Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)) is amended--

(1) in paragraph (1)--

(A) in subparagraph (C)(iii), by striking the period at the end and inserting  
'; when the victim of such crime elects or is unable to make such a  
report.'; and

(B) in subparagraph (F)--

(i) in clause (i)(VIII), by striking 'and' after the semicolon;

(ii) in clause (ii)--

(I) by striking 'sexual orientation' and inserting ' national  
origin, sexual orientation, gender identity,'; and

(II) by striking the period and inserting '; and'; and

(iii) by adding at the end the following:

‘(iii) of domestic violence, dating violence, and stalking incidents that were reported to campus security authorities or local police agencies.’;

(2) in paragraph (3), by inserting ‘, that withholds the names of victims as confidential,’ after ‘that is timely’;

(3) in paragraph (6)(A)--

(A) by redesignating clauses (i), (ii), and (iii) as clauses (ii), (iii), and (iv), respectively;

(B) by inserting before clause (ii), as redesignated by subparagraph (A), the following:

‘(i) The terms ‘dating violence’, ‘domestic violence’, and ‘stalking’ have the meaning given such terms in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).’; and

(C) by inserting after clause (iv), as redesignated by subparagraph (A), the following:

‘(v) The term ‘sexual assault’ means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.’;

(4) in paragraph (7)--

(A) by striking ‘paragraph (1)(F)’ and inserting ‘clauses (i) and (ii) of paragraph (1)(F)’; and

(B) by inserting after ‘Hate Crime Statistics Act.’ the following: ‘For the offenses of domestic violence, dating violence, and stalking, such statistics shall be compiled in accordance with the definitions used in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).’;

(5) by striking paragraph (8) and inserting the following:

‘(8)(A) Each institution of higher education participating in any program under this title and title IV of the Economic Opportunity Act of 1964, other than a foreign institution of higher education, shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding--

‘(i) such institution’s programs to prevent domestic violence, dating violence, sexual assault, and stalking; and

‘(ii) the procedures that such institution 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.

‘(B) The policy described in subparagraph (A) shall address the following areas:

‘(i) Education programs to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking, which shall include--

‘(I) primary prevention and awareness programs for all incoming students and new employees, which shall include--

‘(aa) a statement that the institution of higher education prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking;

‘(bb) the definition of domestic violence, dating violence, sexual assault, and stalking in the applicable jurisdiction;

‘(cc) the definition of consent, in reference to sexual activity, in the applicable jurisdiction;

‘(dd) safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual;

‘(ee) information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and

‘(ff) the information described in clauses (ii) through (vii); and

‘(II) ongoing prevention and awareness campaigns for students and faculty, including information described in items (aa) through (ff) of subclause (I).

‘(ii) Possible sanctions or protective measures that such institution may impose following a final determination of an institutional disciplinary procedure regarding rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking.

‘(iii) Procedures victims should follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information in writing about--



‘(I) the importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order;

‘(II) to whom the alleged offense should be reported;

‘(III) options regarding law enforcement and campus authorities, including notification of the victim’s option to--

‘(aa) notify proper law enforcement authorities, including on-campus and local police;

‘(bb) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and

‘(cc) decline to notify such authorities; and

‘(IV) where applicable, the rights of victims and the institution’s responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

‘(iv) Procedures for institutional disciplinary action in cases of alleged domestic violence, dating violence, sexual assault, or stalking, which shall include a clear statement that--

‘(I) such proceedings shall--

‘(aa) provide a prompt, fair, and impartial investigation and resolution; and

‘(bb) be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;

‘(II) the accuser and the accused are entitled to 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 an advisor of their choice; and

‘(III) both the accuser and the accused shall be simultaneously informed, in writing, of--

‘(aa) the outcome of any institutional disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking;

‘(bb) the institution’s procedures for the accused and the victim to appeal the results of the institutional disciplinary proceeding;

‘(cc) of any change to the results that occurs prior to the time that such results become final; and

‘(dd) when such results become final.

‘(v) Information about 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.

‘(vi) Written notification of students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community.

‘(vii) Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

‘(C) A student or employee who reports to an institution of higher education 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, shall be provided with a written explanation of the student or employee’s rights and options, as described in clauses (ii) through (vii) of subparagraph (B).’;

(6) in paragraph (9), by striking ‘The Secretary’ and inserting ‘The Secretary, in consultation with the Attorney General of the United States,’;

(7) by striking paragraph (16) and inserting the following:

‘(16)(A) The Secretary shall seek the advice and counsel of the Attorney General of the United States concerning the development, and dissemination to institutions of higher education, of best practices information about campus safety and emergencies.

‘(B) The Secretary shall seek the advice and counsel of the Attorney General of the United States and the Secretary of Health and Human Services concerning the development, and dissemination to institutions of higher education, of best practices information about preventing and responding to incidents of domestic violence, dating

violence, sexual assault, and stalking, including elements of institutional policies that have proven successful based on evidence-based outcome measurements.’; and

(8) by striking paragraph (17) and inserting the following:

‘(17) No officer, employee, or agent of an institution participating in any program under this title shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities under any provision of this subsection.’

(b) Effective Date- The amendments made by this section shall take effect with respect to the annual security report under section 485(f)(1) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(1)) prepared by an institution of higher education 1 calendar year after the date of enactment of this Act, and each subsequent calendar year.

**(f) Disclosure of campus security policy and campus crime statistics**

(1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.

(B) A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(C) A statement of current policies concerning campus law enforcement, including—

(i) the law enforcement authority of campus security personnel;

(ii) the working relationship of campus security personnel with State and local law enforcement agencies, including whether the institution has agreements with such agencies, such as written memoranda of understanding, for the investigation of alleged criminal offenses; and

(iii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate law enforcement agencies, when the victim of such crime elects or is unable to make such a report.

(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(E) A description of programs designed to inform students and employees about the prevention of crimes.

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available—

(i) of the following criminal offenses reported to campus security authorities or local police agencies:

(I) murder;

(II) sex offenses, forcible or nonforcible;

(III) robbery;

(IV) aggravated assault;

(V) burglary;

(VI) motor vehicle theft;

(VII) manslaughter;

(VIII) arson; ~~and~~

(IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and

(ii) of the crimes described in subclauses (I) through (VIII) of clause (i), of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of other crimes involving bodily injury to any person, in which the victim is intentionally selected because of the actual or perceived race, gender, religion, national origin, sexual orientation, gender identity, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice; ~~and~~

(iii) of domestic violence, dating violence, and stalking incidents that were reported to campus security authorities or local police agencies.

(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

(H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under section 1011i of this title.

(I) A statement advising the campus community where law enforcement agency information provided by a State under section 14071 (j) <sup>[2]</sup> of title 42, concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

(J) A statement of current campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication (if appropriate), which policies shall include procedures to—

- (i) immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, as defined in paragraph (6), unless issuing a notification will compromise efforts to contain the emergency;
- (ii) publicize emergency response and evacuation procedures on an annual basis in a manner designed to reach students and staff; and
- (iii) test emergency response and evacuation procedures on an annual basis.

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

(3) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely, that withholds the names of victims as confidential, and that will aid in the prevention of similar occurrences.

(4) (A) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including—

- (i) the nature, date, time, and general location of each crime; and
- (ii) the disposition of the complaint, if known.

(B)(i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security authority.

(ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department.

(iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.

(5) On an annual basis, each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall—

(A) review such statistics and report to the authorizing committees on campus crime statistics by September 1, 2000;

(B) make copies of the statistics submitted to the Secretary available to the public; and

(C) in coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

**(6)(A)** In this subsection:

**(i)** The terms ‘dating violence’, ‘domestic violence’, and ‘stalking’ have the meaning given such terms in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).

**(ii)** The term “campus” means—

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

**(II)** property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

**(iii)** The term “noncampus building or property” means—

**(I)** any building or property owned or controlled by a student organization recognized by the institution; and

**(II)** any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution’s educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

**(iv)** The term “public property” means 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.

**(v)** The term ‘sexual assault’ means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

**(B)** In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

**(7)** The statistics described in clauses (i) and (ii) of paragraph (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act. For the offenses of domestic violence, dating violence, and stalking, such statistics shall be compiled in accordance with the definitions used in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).

Such statistics shall not identify victims of crimes or persons accused of crimes.

**(8)(A)** Each institution of higher education participating in any program under this title and title IV of the Economic Opportunity Act of 1964, subchapter and part C of subchapter I of chapter 34 of title 42, other than a foreign institution of higher education, shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding—

~~(i) such institution's campus sexual assault programs to prevent domestic violence, dating violence, sexual assault, and stalking; which shall be aimed at prevention of sex offenses; and (ii) the procedures that such institution 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, followed once a sex offense has occurred.~~

**(B)** The policy described in subparagraph (A) shall address the following areas:

**(i)** Education programs to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking, which shall include—

**(I)** primary prevention and awareness programs for all incoming students and new employees, which shall include—(aa) a statement that the institution of higher education prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking; (bb) the definition of domestic violence, dating violence, sexual assault, and stalking in the applicable jurisdiction; (cc) the definition of consent, in reference to sexual activity, in the applicable jurisdiction; (dd) safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual; (ee) information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and (ff) the information described in clauses (ii) through (vii); and

**(II)** ongoing prevention and awareness campaigns for students and faculty, including information described in items (aa) through (ff) of subclause (I). ~~and other sex offenses.~~

**(ii)** Possible sanctions or protective measures that such institution may impose to be imposed following ~~at~~ the final determination of an ~~institutional on-campus~~ disciplinary procedure regarding rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking, ~~or other sex offenses, forcible or nonforcible.~~

**(iii)** Procedures ~~victims students~~ should follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information in writing about—

**(I)** the importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order;

**(II)** to whom the alleged offense should be reported;

**(III)** options regarding law enforcement and campus authorities, including notification of the victim's option to (aa) notify proper law enforcement authorities, including on-campus and local police; (bb) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and (cc) decline to notify such authorities; and

**(IV)** where applicable, the rights of victims and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court. ~~occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.~~

**(iv)** Procedures for institutional disciplinary action on-campus disciplinary action in cases of alleged domestic violence, dating violence, sexual assault, or stalking, which shall include a clear statement that—

**(I)** such proceedings shall—(aa) provide a prompt, fair, and impartial investigation and resolution; and (bb) be conducted by officials who receive annual training on the issues related to



domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;

~~(II) the accuser and the accused are entitled to the same opportunities to have others present during an institutional a-campus disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice; and~~

~~(III) both the accuser and the accused shall be simultaneously informed, in writing, of-(aa) of the outcome of any institutionaleampus disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking; (bb)brought alleging a sexual assault. The institution's procedures for the accused and the victim to appeal the results of the institutional disciplinary proceeding; (cc) of any change to the results that occurs prior to the time that such results become final; and (dd) when such results become final.~~

~~(v) Information about 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.~~

~~(v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.~~

~~(vi) Written nNotification of students and employees about of existing counseling, health, mental health, victim advocacy, legal assistance, and other services available or student services for victims of sexual assault, both on-campus and in the community.~~

~~(vii) Written nNotification of victims students of about options for, and available assistance in, changing academic, and living, transportation, and working situations after an alleged sexual assault incident, if so requested by the victim and if such accommodations changes are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.~~

~~(C) A student or employee who reports to an institution of higher education 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, shall be provided with a written explanation of the student or employee's rights and options, as described in clasuses (ii) through (vii) of subparagraph (B).Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.~~

(9) The Secretary, in consultation with the Attorney General of the United States, shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.

(10) Nothing in this section shall be construed to require the reporting or disclosure of privileged information.

(11) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

(12) For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur—

(A) on campus;

(B) in or on a noncampus building or property;

(C) on public property; and

(D) in dormitories or other residential facilities for students on campus.

(13) Upon a determination pursuant to section [1094 \(c\)\(3\)\(B\)](#) of this title that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this subsection, the Secretary shall impose a civil penalty upon the institution in the same amount and pursuant to the same procedures as a civil penalty is imposed under section [1094 \(c\)\(3\)\(B\)](#) of this title.

(14)(A) Nothing in this subsection may be construed to—

(i) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(ii) establish any standard of care.

(B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

(15) The Secretary shall annually report to the authorizing committees regarding compliance with this subsection by institutions of higher education, including an up-to-date report on the Secretary's monitoring of such compliance.

(16)(A) The Secretary may seek the advice and counsel of the Attorney General [of the United States](#) concerning the development, and dissemination to institutions of higher education, of best practices information about campus safety and emergencies.

[\(B\) The Secretary shall seek the advice and counsel of the Attorney General of the United States and the Secretary of Health and Human Services concerning the development, and dissemination to institutions of higher education, of best practices information about preventing and responding to incidents of domestic violence, dating violence, sexual assault, and stalking, including elements of institutional policies that have proven successful based on evidence-based outcome measures.](#)

(17) ~~Nothing in this subsection shall be construed to permit an institution, or an~~ officer, employee, or agent of an institution, participating in any program under this title shall subchapter and part C of subchapter I of chapter 34 of title 42 to retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities under with respect to the implementation of any provision of this subsection.

(18) This subsection may be cited as the “Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act”.

Effective one calendar year after enactment.

## **Brief Analysis of the Violence Against Women Act (VAWA) and Changes to the Clery Act & Title IX Compliance**

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The Senate and House of Representatives have passed an amendment to the Violence Against Women Act (VAWA). The President is expected to sign the legislation.

We have broken up this document into “what we know; what we don’t know,” which is an informal discussion of the law and its impact on colleges and universities, and a second section that catalogs and analyzes each relevant change in the legislation. This guidance includes all information we know to this point and will be supplemented by later guidance.

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### **What we know:**

- Section 304 of VAWA includes some changes to the Clery Act and Title IX that will require changes by colleges to maintain compliance.
- The legislation codifies some aspects of the Dear Colleague Letter (DCL), merging them with traditional Clery provisions, but does not codify all aspects of the DCL.
- The Amendments take effect to the Annual Security Report prepared by an institution 1 calendar year after the enactment of the Act.
- The Amendments add “national origin” and “gender identity” to the list of hate crime categories for Clery Act reporting.
- The Amendments add three additional crimes that must be tracked and reported in the Annual Security Report: domestic violence, dating violence, and stalking.
- The legislation will require additional education, notice, and campaign work by institutions to notify students and employees about certain dangers as well as their rights.

### **What we don’t know:**

- Whether and how the Department of Education will implement guidance. In the recent past, ED has utilized the Negotiated Rulemaking process to implement regulations on changes to the Higher Education Act. We also don’t know whether the regulatory process will delay implementation of some or all aspects of the legislation. SUNY will actively track the process and issue comments where we believe the regulations can better serve our institutions.
- Where the guidance will come from. The legislation instructs the Department of Education to seek guidance from the Attorney General and the Department of Health and Human Services on some aspects of the legislation. This may extend the amount of time it takes to ascertain guidance and leave institutions unsure of exactly how to comply with the new provisions.

- While the legislation says this will take effect for the ASR issued one calendar year after the legislation passes, the October 2014 ASR includes statistics from all of calendar year 2013, which is the year in which the legislation was passed. However, institutions were not collecting statistics for the first few months of the year. Further, if past practice is a guide, the Department of Education will implement rulemaking, which will include necessary definitions and guidance, that may push out full implementation to later ASRs. In the past, the Department of Education has not audited for errors prior to issuing regulations. We do not know if that practice will continue in this case.
- What the exact guidance on defining dating violence, domestic violence and stalking will include. The definitions as written in the legislation are somewhat vague and open to interpretation. We don't know, for instance, whether the Amendments cover reports of cyber-stalking. Nor do we know how to determine geographic location for certain aspects of stalking and other crimes that are not limited to a specific place. We hope that the Department of Education will, through Regulations and guidance, clarify those definitions somewhat to ensure accurate and uniform reporting across the country. We will continue to track and advise on these definitions.
- What the educational notice and programs will require. The legislation adds a new term "campaign" to the Clery Act/Title IX lexicon where it requires "ongoing prevention and awareness campaigns for students and faculty." Legislative interpretation stands to reason that a "campaign" is more involved than the traditional "notice" required, but it will require Department of Education guidance to know exactly what will be required in such a campaign.

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**2013 Violence Against Women Act: Sec 304 Campus Sexual Violence, Domestic Violence, Dating Violence, and Stalking Education and Prevention:**  
**Analysis of the Legislative Changes:**

I- Annual Security Report crime reporting changes:

- No changes to the reportable Part I crimes.
- For Hate Crimes, categories of prejudice (based on actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability) now also includes **national origin** and **gender identity**.

II- Timely Warning Change:

- The legislation makes a change to Timely Warnings in that they must **withhold the names of victims as confidential**. (this should not be a new change to our campuses as we have long anonymized the names of victims of crimes in Timely Warnings recalling that the purpose of a Timely Warning is to alert the community of a crime or crimes that have occurred and offer the community advice and guidance on protecting itself).

### III- Annual Security Report crime definition changes:

- **New Definitions:** dating violence, domestic violence, and stalking as defined in other areas of the law (copied below):
  - **Dating violence**

The term “dating violence” means violence committed by a person—

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship.
  - **Domestic violence**

The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse 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, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or 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.
  - **Stalking**

The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) fear for his or her safety or the safety of others; or

(B) suffer substantial emotional distress
  - **Sexual assault**

Offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation

### IV-Changes to Policy Statements of the ASR:

- The legislation adds domestic violence, dating violence, and stalking to “sexual assault programs” that will be included in the policy statement developed and distributed as part of the report.
- Institutions must have a statement about the procedures to be used not only with “sex offenses” (old language), but incidents of “domestic violence, dating violence, sexual assault, or stalking” have been reported.
- The ASR must include “a statement of the standard of evidence that will be used” during any conduct proceeding. *Note that it does **not** require a particular standard, only that*

*the institution must be transparent about the standard you are using. The DCL advises using preponderance of the evidence, so clearly state that in the institution's policy.*

- Policy Statements on Education Programs:
  - The legislations adds domestic violence, dating violence, sexual assault, and stalking to “rape, acquaintance rape” for education/awareness programs addressed in the policy.

There is a new subsection under that: Education programs shall include “primary prevention and awareness programs for all incoming students and new employees,” which shall include:

    - a statement that the institution prohibits domestic violence, dating violence, sexual assault, and stalking;
    - the definition of domestic violence, dating violence, sexual assault, and stalking in the applicable jurisdiction;
    - the definition of consent, in reference to sexual activity, in the applicable jurisdiction;
    - safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual;
    - information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and
    - ongoing prevention and awareness campaigns for students and faculty on all of the above.
  - Addressing new sections that codify the Department of Education’s Dear Colleague Letter, the policy statements of the ASR shall also include:
    - possible sanctions and protective measures following a final determination regarding rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking;
    - Procedures victims should follow if a sex, offense, DV, dating violence, SA, or stalking has occurred, including the following information provided in **writing**:
      - The importance of preserving evidence for proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order;
      - To whom the offense should be reported;
      - Options regarding reporting, including law enforcement and campus authorities options to:
        - Notify victim of the option to notify on-campus and local police;
        - assist the victim if they choose in notifying law enforcement; and
        - give the victim the right to decline to notify such authorities.
      - Rights of victims and institutional responsibilities on orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal, civil, or tribal courts.
    - Procedures for institutional disciplinary action in cases of domestic violence, dating violence, sexual assault, or stalking, which shall include a clear statement that:

- Proceedings will provide a prompt, fair, and impartial investigation and resolution; and be conducted by officials who receive annual training on issues related to DV, dating violence, SA, and stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.
- The accuser and accused are entitled to the same opportunities to have a support person/advisor of their choice at any proceeding or related meeting.
- The accuser and accused must be simultaneously informed in writing of:
  - the outcome of any institutional disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking.
  - The institution's procedures for appealing the results of the proceeding.
  - Any change to the results that occurs prior to the time that such results become final.
  - When such results become final.
- Information about how confidentiality of victims will be protected, including how publicly-available recordkeeping will be accomplished without including identifying information about the victim, to the extent possibly by law
- Written notification of students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community.
- Written notification to victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested by victim and if reasonable available, regardless of whether victim chooses to report the crime to campus police or local law enforcement.
- Further, a student or employee who reports to an institution of higher education that s/he has been a victim of domestic violence, dating violence, sexual assault, or stalking, whether it occurred on or off-campus, shall be provided with a written explanation of his or her rights and options, as described above.

#### V- Retaliation:

- There shall be no retaliation against anyone who exercises rights under the Clery Act and Title IX (such retaliation is already prohibited).



## Notifications Following Student Conduct Hearings

Andrea Stagg & Joseph Storch, State University of New York

May 2013

Violation & Example	Notifications	Relevant Rules
Crime of Violence or Nonforcible Sex Offense <sup>1</sup>	Written notice of outcome and any sanctions to both parties.  If someone other than the parties asks, you <i>may</i> provide certain information <u>only if</u> the accused was found responsible.	Clery and FERPA  FERPA
Sexual Violence (included in Crime of Violence and requires the same notifications, but listed separately because it invokes Title IX)  Example: rape, sexual assault, sexual coercion	Written notice of outcome and any sanctions imposed to both parties.  If someone other than the parties asks, you <i>may</i> provide certain information <u>only if</u> the accused was found responsible.	Clery <sup>2</sup> , FERPA <sup>3</sup> Title IX DCL <sup>4</sup> , VAWA/SaVE <sup>5</sup>  FERPA <sup>6</sup>
Sexual Harassment, nonviolent  Example: sexually explicit comments, unwanted nonphysical sexual attention	Provide written notice of outcome to both parties. Notify the victim/complainant about sanctions <u>that directly relate to the harassed student</u> .  Example of sanctions that directly relate to the harassed student: no-contact order, suspension, expulsion.  Example of sanctions that <u>do not</u> relate: probation, cleaning duties.	Title IX DCL <sup>7</sup> and FERPA <sup>8</sup>
Stalking, Domestic Violence, Dating Violence	Written notice of outcome to both parties.	VAWA/SaVE <sup>9</sup>

<sup>1</sup> Crimes of violence is defined in [18 U.S.C. 16](#) as: “offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” [34 C.F.R. 99, Appendix A to Part 99](#) lists Crimes of Violence and their definitions, including arson, assault offenses, burglary, criminal homicide, destruction/damage/vandalism of property, kidnapping/abduction, and sex offenses.

<sup>2</sup> [The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act](#) requires institutions to inform both parties of the outcome of any disciplinary proceeding brought alleging a sex offense (which includes sexual violence like rape or assault). Under [FERPA](#), “final results” and “outcome” include: the name of the accused student, the violation found to have been committed, and any sanction imposed. See 20 USC 1232g(b)(6)(C).

<sup>3</sup> For crimes of violence and non-forcible sex offenses, [FERPA](#) permits the disclosure of the final results of a disciplinary proceeding to the victim, regardless of whether or not the accused was found responsible. See 20 USC 1232g(b)(6)(A).

<sup>4</sup> [Guidance from the Department of Education’s Office for Civil Rights](#) (OCR) requires written notice of outcome, including all sanctions, to victims of sexual violence.

<sup>5</sup> [The amendments to the Violence Against Women Act](#) require the accused and accuser in cases of sexual assault to be simultaneously informed in writing of the outcome of a disciplinary proceeding. They also must be informed of the appeals procedures, if any, and any change that occurs before the results become final (outcome of appeals).

<sup>6</sup> For crimes of violence and nonforcible sex offenses, [FERPA](#) permits the disclosure of the “final results” of a disciplinary hearing only if that student was found responsible for violating the institutions rules or policies with respect to such crime or offense. See 20 USC 1232g (b)(6)(B),.

<sup>7</sup> [Guidance from OCR](#) requires written notice of the outcome to both parties and of course notifying the accused of any sanctions. The institution can only disclose to the harassed student the sanctions that directly relate to the student.

<sup>8</sup> Guidance from OCR also affirms that under FERPA institutions are permitted to disclose outcome and the sanction to the victim in a case of sexual harassment (nonviolent) if that sanction directly relates to the harassed student. See page vii of the [2001 Revised Sexual Harassment Guidance](#) from OCR and pages 5 and 13 of the 2011 [DCL on Sexual Violence](#). OCR’s view is that disclosing the outcome and sanctions that relate to the victim is necessary to eliminate the hostile environment.

<sup>9</sup> [The amendments to the Violence Against Women Act](#) require the accused and accuser in cases of stalking, dating violence, and domestic violence to be simultaneously informed in writing of the outcome of a disciplinary proceeding. They also must be informed of the appeals procedures, if any, and any change that occurs before the results become final (eg, the outcome of appeals).

## Properly Classifying Geographic Locations for Clery Act Annual Security Report Purposes

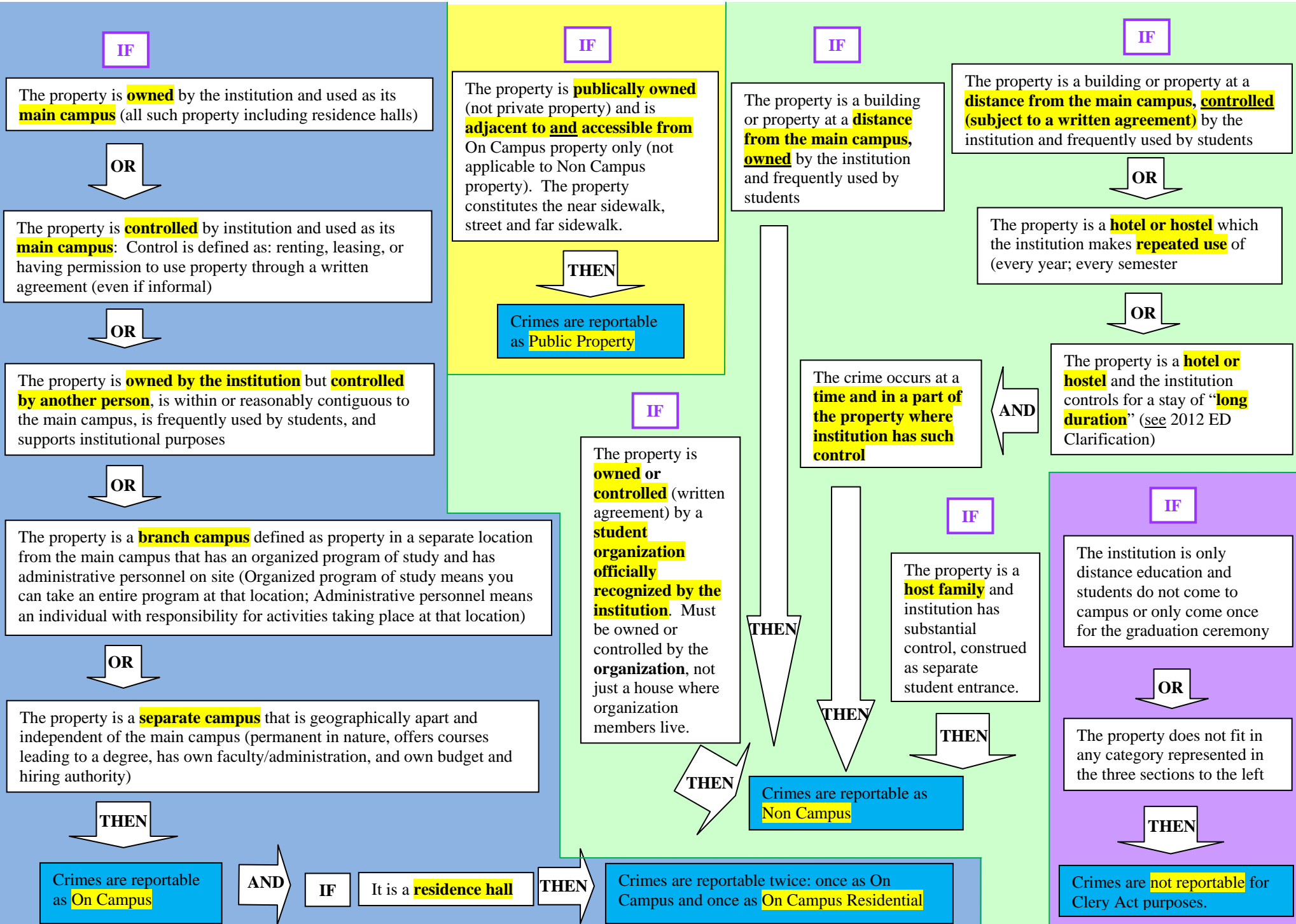
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The attached document is a visual representation of the geographic locations for which colleges and universities must count Clery Act reportable crimes. The Clery Act requires that colleges and universities report crimes that occur:

- On campus;
- On campus in residence halls;
- In public property adjacent to and accessible from the campus; and
- In noncampus property.

Crimes that do not occur in one of those areas are not reportable in the Annual Security Report (note that the Crime Log has an additional reportable “patrol jurisdiction”). The information in the flow chart is derived from the [Handbook for Campus Safety and Security Reporting](#), pages 27-32. The chart develops a series of “If-Then” questions to assist institutions as they analyze whether a given geographic location fits into one of the Clery Act reportable locations. It is difficult to represent this information graphically, so the chart makes liberal use of different colors, bolding and highlighting to differentiate between requirements (note that there is no meaning to any individual color, they were merely chosen to make each section stand out from neighboring sections). This chart is for information purposes and is not a replacement for case-by-case analysis or guidance from counsel.

Last updated May 2013.



U.S. Department of Justice  
Federal Bureau of Investigation



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# UCR

*Uniform Crime Reporting Handbook*

## FORCIBLE RAPE (2)

- Rape by Force
- Attempts to Commit Forcible Rape

Reporting agencies must classify one offense for each female raped or upon whom an assault to rape or attempt to rape has been made. Reporting agencies must classify rapes or attempts accomplished by force or threat of force as forcible regardless of the age of the female victim.

### Forcible Rape—Rape by Force (2a)

*Definition:* The carnal knowledge of a female forcibly and against her will.

Carnal knowledge is defined by *Black's Law Dictionary*, 6th ed. as “the act of a man having sexual bodily connections with a woman; sexual intercourse.” There is carnal knowledge if there is the slightest penetration of the sexual organ of the female (vagina) by the sexual organ of the male (penis).

**Reporting agencies must classify rapes or attempts accomplished by force or threat of force as forcible regardless of the age of the female victim.**

“Against her will” includes instances in which the victim is incapable of giving consent because of her temporary or permanent mental or physical incapacity (or because of her youth). The ability of the victim to give consent must be a professional determination by the law enforcement agency. The age of the victim, of course, plays a critical role in this determination. Individuals do not mature mentally at the same rate. For example, no 4-year-old is capable of consenting, whereas victims aged 10 or 12 may need to be assessed within the specific circumstances regarding the giving of their consent.

*The following scenarios illustrate incidents known to law enforcement that reporting agencies must classify as Rape by Force (2a):*

1. Law enforcement received a complaint from a victim who claimed that when she was leaving work late one night, she was attacked in the company parking lot by an unidentified male and forcibly raped. The offender was not apprehended.
2. Two men lured a woman to their motel room with the promise of discussing a job opportunity. They threatened her with a knife and both forcibly raped her. On complaint by the woman, the police arrested both men.
3. Three girls were attacked, assaulted, and raped by four boys. Each boy raped each of the girls. No arrests were made.

## Forcible Rape—Attempts to Commit Forcible Rape (2b)

Assaults or attempts to forcibly rape are classified as Attempts to Commit Forcible Rape (2b).

*The following scenarios illustrate incidents known to law enforcement that reporting agencies must classify as Attempts to Commit Forcible Rape (2b):*

4. A man attacked a woman on the street, knocked her down, and attempted to rape her. A pedestrian frightened the man away before he could complete the attack.
5. At a local bar, a man slipped gamma-hydroxybutyrate (GHB), a date rape drug, into a woman's drink. However, the man was unable to lure the woman away from her friends. Investigators concluded that the man intended to have intercourse with the woman and arrested him.

Agencies must **not** classify statutory rape, incest, or other sex offenses, i.e. forcible sodomy, sexual assault with an object, forcible fondling, etc. as Forcible Rape (2a or 2b). The UCR Program applies the following definitions:

- Statutory rape—nonforcible sexual intercourse with a person who is under the statutory age of consent.
- Incest—nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

However, if the female victim associated with either offense, statutory rape or incest, is forced against her will to engage in sexual intercourse, the incident must be classified as Rape by Force (2a).

*The following scenarios illustrate incidents known to law enforcement that reporting agencies must **not** classify as Forcible Rape:*

6. A 15-year-old male had consensual sexual intercourse with a 13-year-old female. The age of consent in the state is 16.
7. At a family reunion, a woman had sexual intercourse with her nephew, in violation of the state's incest laws. No force or weapon was involved.
8. A man forcibly sodomized his male cousin. The cousin was hospitalized with internal injuries.

**NOTE:** By definition, sexual attacks on males are excluded from the rape category and must be classified as assaults or other sex offenses depending on the nature of the crime and the extent of injury.



# **Criminal Justice Information Services (CJIS) Division Uniform Crime Reporting (UCR) Program**



# **National Incident-Based Reporting System (NIBRS) User Manual**

Version 1.0

Document Date: 01/17/2013

Prepared by:

Law Enforcement Support Section (LESS)  
Crime Statistics Management Unit (CSMU)

## 11A – 11D 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**

### 11A Rape (except Statutory Rape)

**The carnal knowledge of a person, 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 or physical incapacity**

Agencies should classify the crime as rape, regardless of the age of the victim, if the victim did not consent or if the victim was incapable of giving consent. If the victim consented, the offender did not force or threaten the victim, and the victim was under the statutory age of consent, agencies should classify the crime as statutory rape.

This offense includes the rape of both males and females as long as at least one of the offenders is the opposite sex of the victim. *Black's Law Dictionary*, 6th ed., defines *carnal knowledge* as "the act of a man having sexual bodily connections with a woman; sexual intercourse." There is *carnal knowledge* if there is the slightest penetration of the sexual organ of the female (vagina) by the sexual organ of the male (penis).

In cases where several offenders rape one person, the responding agency should count one Rape (for one victim) and report separate offender information for each offender.

### 11B Sodomy

**Oral or anal sexual intercourse with another person, 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 or physical incapacity**

If the offender both raped and sodomized the victim in one incident, then LEAs should report both offenses.

### 11C Sexual Assault With An Object

**To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, 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 or physical incapacity**

An "object" or "instrument" is anything used by the offender other than the offender's genitalia, e.g., a finger, bottle, handgun, stick.



## 11D 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 or physical incapacity**

Because there is no penetration in fondling, this offense will not convert to the SRS as Rape.

## 36A – 36B Sex Offenses, Nonforcible

**Unlawful, nonforcible sexual intercourse**

### 36A Incest

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

### 36B Statutory Rape

**Nonforcible sexual intercourse with a person who is under the statutory age of consent**

If the offender used or threatened the use of force or the victim was incapable of giving consent because of his/her youth or mental impairment, either temporary or permanent, law enforcement should classify the offense as Rape, not Statutory Rape.

## 280 Stolen Property Offenses

**Receiving, buying, selling, possessing, concealing, or transporting any property with the knowledge that it has been unlawfully taken, as by Burglary, Embezzlement, Fraud, Larceny, Robbery, etc.**

Reporting agencies should enter the type of activity (receiving, buying, selling, possessing, concealing, and/or transporting) in Data Element 12 (Type Criminal Activity/Gang Information).

## 520 Weapon Law Violations

**The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons**

This offense includes violations such as the manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; using, manufacturing, etc., silencers; and furnishing deadly weapons to minors.



Posted Date: May 29, 2013

Author: Lynn Mahaffie, Senior Director, Policy Coordination, Development, and Accreditation Service

Subject: Implementation of Changes Made to the Clery Act by the Violence Against Women Reauthorization Act of 2013

### Background

On March 7th, 2013, President Obama signed the Violence Against Women Reauthorization Act of 2013 (VAWA) (Pub. Law 113-4). Among other provisions, this law amended section 485(f) of the Higher Education Act of 1965, as amended (HEA), otherwise known as the Clery Act. These statutory changes require institutions to compile statistics for certain crimes that are reported to campus security authorities or local police agencies including incidents of sexual assault, domestic violence, dating violence, and stalking. Additionally, institutions will be required to include certain policies, procedures, and programs pertaining to these crimes in their Annual Security Reports.

### Negotiated Rulemaking

These statutory changes will require changes to the regulations in 34 CFR Part 668, Subpart D. Before making any changes to the regulations for the title IV, HEA programs, the Department of Education (the Department) must conduct negotiated rulemaking in accordance with section 492 of the HEA. In this regard, the Department published a Notice in the Federal Register (78 Fed. Reg. 22467) on April 16, 2013 announcing topics that the Department may include in the agenda for a planned negotiated rulemaking committee, which included the changes made to Clery Act by VAWA. See <http://www.gpo.gov/fdsys/pkg/FR-2013-04-16/pdf/2013-08891.pdf>.

As discussed in the Federal Register Notice, the next step in the process is a series of public meetings in which interested parties may comment on the topics for negotiation suggested by the Department. The changes made to the Clery Act raise a number of significant policy issues for the Department and we encourage institutions and all interested parties to present comments and questions at one of the remaining public hearings on May 30 in San Francisco and June 4 in Atlanta or to formally submit them in writing to the Department as discussed in the notice.

We will issue proposed and final regulations on this topic after completing the rulemaking process. In the absence of regulations, in this electronic announcement we provide some preliminary guidance for institutions regarding these changes to the Clery Act.

## Annual Security Report

Institutions subject to the Clery Act must distribute an Annual Security Report to current and prospective students and employees that contains campus crime statistics for the previous three calendar years, as well as policies and procedures pertaining to campus safety and security. Under section 304(b) of VAWA, the changes made by the new law “take effect with respect to the annual security report . . . prepared by an institution of higher education one calendar year after the date of enactment” of VAWA. Thus, the first Annual Security Report that must include the new required information is the report that must be issued by each institution by October 1, 2014. This report would include crime statistics from calendar years 2011, 2012, and 2013. These crime statistics would also be reported to the Department through the web-based data collection in October 2014.

As noted above, final regulations to implement the statutory changes to the Clery Act will not be effective until after the Department completes the rulemaking process. Until those regulations are issued, we expect institutions to make a good faith effort to comply with the statutory requirements in accordance with the statutory effective date. The Department expects that institutions will exercise their best efforts to include statistics for the new crime categories for calendar year 2013 in the Annual Security Report due in October of 2014. We understand, however, that institutions may not have complete statistics for the year when the statistics must be issued and reported to the Department.

## Questions about VAWA

Please submit written inquiries about the changes to the Clery Act by VAWA to our Clery Act Help Desk at [HandbookQuestions@ed.gov](mailto:HandbookQuestions@ed.gov). The Department will use these questions to develop future guidance as necessary.

### **NACUA's Clery Act Resource Page**

For more resources on the Clery Act, including changes made by the latest reauthorization of the recent Violence Against Women Act, please visit NACUA's Clery Act resource page at [http://www.nacua.org/lrs/NACUA\\_Resources\\_Page/CleryActResources.asp](http://www.nacua.org/lrs/NACUA_Resources_Page/CleryActResources.asp).

The resource page, accessible to all NACUA members, contains relevant statutes, regulations, caselaw, enforcement actions by the U.S. Department of Education, and various secondary materials written by NACUA members.